

**JUDGE PHILIP H. BRANDT**  
**Tacoma**  
**Chapter 13**

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

**In re:**

**ERIC KRENING,**

**Debtor.**

NO. 09-44745-PHB

**DECLARATION OF MICHAEL R.  
CARYL SUPPORTING MOTION FOR  
RELIEF FROM STAY TO ALLOW  
LIQUIDATION OF ATTORNEY LIEN  
CLAIM IN STATE COURT**

MICHAEL CARYL declares and states as follows:

1. I have been one of the attorneys for Debtor Eric T. Krening in the underlying case captioned MARCIA M. WHARTON and S. PAUL SMITH v. BERRY & ZUNDEL, PLLC, v. ERIC T. KRENING, King County Cause # 07-2-14321-1 SEA. I am employed in my professional services corporation, Michael R. Caryl, P.S., and my law firm performed legal services for debtor Krening in that case from April 2007 through February 2008. I make this declaration in support of my motion to lift the stay to allow adjudication of my claim of attorney's lien in King County Superior Court. I have personal knowledge of the matters testified to in this declaration.

**DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 1 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1           2.     Training and Experience. I am an honors *cum laude* graduate from St. Lawrence  
2 University (A.B. 1969), took my Juris Doctor from Georgetown University Law Center in 1972 and  
3 am a highest honors graduate with an LL.M from George Washington University School of Law in  
4 1977. I am a Seattle-based trial lawyer with over 36 years of experience and have tried more than 400  
5 civil and criminal cases and arbitrations. I served 4 years active duty in the Army J.A.G.C. Since  
6 starting private practice in 1977, I have focused on civil trial work including personal injury,  
7 commercial and construction litigation, collection work and insurance litigation. I have served on the  
8 Board of Governors of the Washington State Trial Lawyer's Association, have taught Litigation for  
9 Paralegals at City University in Seattle, and have been an "AV" rated lawyer for over 26 years with the  
10 Martindale Hubbell law list, that organization's highest rating.

11  
12           3.     Practice Focus on Attorney's Fee Litigation. Since 1995, my practice began to focus on  
13 representing and counseling lawyers, law firms and clients in the area of attorney fee disputes. This  
14 practice developed out of my successful representation of Seattle attorney Fred Zeder who prevailed  
15 after a 5-day trial, an appeal to Division I and a petition to the Supreme Court. See Taylor v. Shigaki,  
16 84 Wn. App. 723, 930 P.2d 340 (1997). I also consult on both legal malpractice and attorney  
17 discipline issues relating to attorney's fees and frequently serve as an expert witness in courts and  
18 arbitrations on attorney fee dispute matters. At present, virtually all of my practice involves issues  
19 relating to attorney's fees. I have given at least 19 specific CLE lectures to the State and trial lawyer  
20 bars on topics including legal ethics, attorney-client relationships, lawyer-client and lawyer-lawyer fee  
21 disputes, including the proper contents of attorneys' fee agreements, collecting attorneys' fees from  
22 clients, using and foreclosing attorneys' liens, collecting a contingency fee after discharge by the  
23  
24  
25

26 **DECLARATION OF MICHAEL R. CARYL**  
**SUPPORTING MOTION TO LIFT STAY IN**  
**BANKRUPTCY TO ADJUDICATE CLAIM OF**  
**ATTORNEY'S LIEN**

- 2 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1 client, and attorneys' fee disputes between lawyers. I am one of the regular panelists in the WSBA's  
2 Annual *Law of Lawyering* Seminar. During last December 2008, I gave two CLE presentations to  
3 WSBA and WSTLA seminars, one on the use and foreclosure of attorney's liens and one on fee  
4 agreement best practices and fee-sharing among lawyers.

5  
6 3. ADR/Expert Witness/Litigation Experience. I have been selected to serve as an  
7 arbitrator and mediator in lawyer/lawyer fee disputes and have represented numerous lawyer clients in  
8 various aspects of fee disputes. The principal issue in most of those cases is the value of lawyer work  
9 done. I have served as an expert witness on more than twenty occasions giving opinions on the  
10 reasonableness of attorneys' fees, and various ethical issues facing lawyers relating to the charging of  
11 attorney's fees. I have litigated the reasonableness of attorneys' fees and presented expert testimony  
12 on this subject in many cases as well, including the published cases of *Taylor v. Shigaki*, 84 Wn. App.  
13 723, 930 P.2d 340 (1997), and *Barrett v. Freise*, 119 Wn. App. 823, 82 P.3d 1179 (2003) (where we  
14 successfully achieved recovery of the contingency fee dispute under RCW 4.24.005 when the client  
15 fired the lawyer after obtaining settlement commitments of over \$600,000, based on the doctrine of  
16 substantial performance.)

17  
18 4. Publications on Attorney's Fee Issues. I have had many articles published in various  
19 bar periodicals on fee-related subjects including the WSBA Bar News, the WSTLA Trial News and the  
20 King County Bar Bulletin, covering subjects including collection of attorney's fees from clients,  
21 breach of fiduciary duty in fee activities, the efficacy of flat fees, and billing and intake practices  
22 relating to fees. My most recent article, Lessons in Private Practice: The Law of Unintended  
23 Consequences, dealt with the risks of suing clients for fees. December 2008, King County Bar  
24

25  
26 **DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 3 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1 Bulletin. Lastly, I am the editor of the Attorney's Fees Chapter in the WSBA Ethics Desk Book,  
2 which chapter was entirely re-written and recently published.

3 5. Krening Engagement. Eric Krening came to me in the spring of 2007, specifically for my  
4 background in fee dispute litigation. After representing Dr. Wharton in the IDEA claim involving her  
5 disabled son and having received what was apparently a good result, his relationship with Dr. Wharton  
6 soured. After winning the case, Mr. Krening withdrew with the consent of Dr. Wharton. At the time, Dr.  
7 Wharton had fallen far behind in the payment of Krening's hourly attorney's fees, and owed him a  
8 sizeable balance. Krening came to me for advice and counsel on his fee predicament with plaintiff  
9 Wharton, and he hired me to try to negotiate a settlement. In Mr. Krening's case, I suggested a strategy  
10 of negotiation and counseled Mr. Krening to be prepared to seriously compromise on Dr. Wharton's  
11 fee balance. At the end of our interview, I specifically discussed my own fee arrangements for serving  
12 as his lawyer. I informed him that I would not require a retainer/advance, but he would have to pay  
13 every invoice as billed. He assured me that he would. I drafted and mailed him an engagement letter  
14 before we met. At our intake, I went over the specific terms of my basic engagement letter and  
15 explained it to him paragraph by paragraph. One paragraph in the engagement letter made clear that  
16 litigating with clients over fees was problematic:  
17  
18

19 You have stated that you need to get out of the front lines in dealings with these people  
20 and have asked me to intervene as your counsel, seek to negotiate a settlement of fees  
21 and to insulate you from one on one dealing with these people. We have not discussed  
22 anything past attempts to negotiate a settlement. Obviously, suing your clients for those  
23 fees once you have withdrawn is problematic and raises many concerns, not the least of  
24 which is a possible malpractice counterclaim. I will discuss all of this with you when  
25 we meet. This will confirm, however, that my initial focus as your lawyer will be to  
26 obtain a resolution of this dispute that you can live with. The costs of litigating with  
these people if a settlement cannot be worked out could be substantial.

26 **DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 4 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1 Mr. Krening made clear that he understood all aspects of the engagement letter's terms. He signed the  
2 engagement letter at the end of our intake interview that day. A true copy of the engagement letter is  
3 attached hereto at **Exhibit A**.

4  
5 6. My Representation of Krening. I attempted to negotiate with Krening's former clients,  
6 Dr. Marcia Wharton and Professor Paul Smith. Krening had apparently angered them to the point that  
7 they had no intention to negotiate – they merely sued him. I became Krening's lawyer, defending a  
8 lawsuit that sought to get out from the payment of all attorney's fees and sought damages for legal  
9 malpractice, breach of fiduciary and at least five other separate claims. I conducted discovery on behalf  
10 of Mr. Krening. I responded to discovery from the plaintiffs, Wharton-Smith. I conducted a CR 26(i)  
11 conference with Paul Smith over discovery (discovery required of counsel by court rule before a discovery  
12 motion might be brought). I brought a motion for summary judgment seeking dismissal of all of the  
13 Wharton-Smith claims, and a dollar judgment on behalf of Krening against Wharton-Smith. I defended  
14 efforts by Wharton-Smith to indefinitely delay the summary judgment and I argued the summary  
15 judgment motion. One significant end result of my efforts was the dismissal of the legal malpractice  
16 claims brought against Krening. I continued to represent Krening well into February, 2008, until all of the  
17 summary judgment sequella was over and I could withdraw without harming Krening.

18  
19 8. Litigating with *Pro Ses* is Expensive. As the Court can appreciate, litigating with a *pro se*  
20 over lawyer's fees can be expensive. *Pro se* parties are unfamiliar with typical litigation practices and  
21 court rules, and everything they do is usually over-the-top. *Pro se* litigants frequently possess hard  
22 feelings that worsen with the passage of time. When litigating against an opposing counsel with no  
23 personal interest, business can usually be done efficiently and dispassionately. This Krening case is a  
24  
25

26 **DECLARATION OF MICHAEL R. CARYL**  
**SUPPORTING MOTION TO LIFT STAY IN**  
**BANKRUPTCY TO ADJUDICATE CLAIM OF**  
**ATTORNEY'S LIEN**

- 5 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1 poster child for needless expense resulting from dealing with *pro ses*. The Wharton-Smith side was  
2 wholly unfamiliar with litigation rules, customs and practices, and even simple communications with them  
3 were time-consuming.

4 9. Billings to Krening. Our engagement letter provided that I would bill Krening each month  
5 for the fees and costs incurred in the month previous. I did in fact bill him precisely as our  
6 agreement provided. Attached hereto at **Exhibit B** is a print out from my computer billing program  
7 summarizing the invoices sent, the two payments made, and the growing balance.

8 10. Mr. Krening's Inability or Unwillingness to Pay My Fees. From the very beginning of the  
9 case, Mr. Krening did not pay my hourly fees. He came to me with the hope that we would negotiate a  
10 settlement for cents on the dollar. Before we knew it, he was involved in acrimonious and complicated  
11 litigation with *pro ses* who did not understand or abide by court rules and commonly accepted litigation  
12 practices. In fact, the entire 10+ months in which I represented Krening, he only made two payments of  
13 \$2,730 and \$4,000, totaling only \$6,730, the last of which was in mid-August 2007. I had numerous  
14 conversations with Mr. Krening and exchanged numerous emails where I exhorted him to pay my  
15 invoices and get current. Never once before I withdrew did Mr. Krening ever question even a single entry  
16 in any invoice, challenge the reasonableness of the charges or the need of the work, or in any manner raise  
17 any issues about his obligation to pay. Mostly he supplied excuses, apologies and promises. He referred  
18 to fees he had coming in from Hawaii on cases he had previously done there, and other potential sources  
19 of funds with which to pay my fees but not once did he ever come through on any of these promises.

20 11. Withdrawal and Filing of Attorney's Lien. I withdrew because of Krening's failure to pay  
21 me. Mr. Krening and a partner in his law firm, Mr. Simmerly, then took over the case. Mr. Krening had  
22

23  
24  
25  
26 **DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 6 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1 promised to pay all my fees repeatedly, but given his own financial condition and other matters that he did  
2 not fully confide in with me, he failed to make any payments after about mid-August 2007. The summary  
3 judgment motion, but for the maneuvering first by Wharton-Smith and later by their lawyer McBroom,  
4 should have been resolved by mid-October. Wharton-Smith's lawyer's procedural maneuvering in late  
5 September through November 2008 was costly and dragged out the process, and Wharton-Smith's motion  
6 for reconsideration after Judge Canova granted the motion extended the process even further. I could not  
7 withdraw until the summary judgment process had been completed. Despite non-payment, Krening  
8 repeated insisted that I remain in the case as his lawyer. When I withdrew, I filed and served a notice of  
9 claim of attorney's lien, a true copy of which is attached hereto at **Exhibit C**. I gave notice to both Mr.  
10 Krening and to the Plaintiffs, Wharton Smith. Accordingly, I am a secured creditor of Mr. Krening to the  
11 extent of funds held secured by my claim of attorney's lien, as is briefed in the motion to lift the stay.  
12

13  
14 12. Resolution of the Wharton-Krening Litigation. The Wharton-Krening lawsuit finally went  
15 to trial in King County Superior Court, before a jury, and presided over by the Hon. Kimberly Prochnau.  
16 The jury rendered a verdict on December 10, 2008, ruling in favor of Krening and his former employer,  
17 Berry and Zundel, and against Plaintiffs Wharton-Smith. There was an attorney's fees provision in the fee  
18 agreement between Berry/Krening and the plaintiffs, Wharton-Smith. I understand that the jury found that  
19 when Krening left Berry & Zundel and took the case with him, that the parties intended to continue under  
20 the same terms and conditions with Krening as set forth in the original fee agreement with Berry and  
21 Zundel. Accordingly, Judge Prochnau entered fee applications from Berry and Krening and ultimately  
22 Judge Prochnau made separate awards of attorney's fees to defendants Krening and Berry. A judgment  
23 on Special Verdict was initially entered on April 17, 2008 by Judge Prochnau. A true copy of that  
24  
25

26 **DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 7 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

1 judgment is attached hereto at **Exhibit D**. Judge Prochnau then awarded Krening attorney's fees and  
2 costs totaling \$37,679. Ultimately Judge Prochnau entered a second order correcting the judgment in  
3 favor of Krening and Berry & Zundel. A true copy of the order correcting judgment is attached hereto at  
4 **Exhibit E**. Once the judgment was finally entered, I filed and served on all necessary parties an Amended  
5 Notice of Claim of Lien against the judgment, as is required by law. A true copy of that amended notice  
6 is attached hereto at **Exhibit F**.

8 13. Securing of Funds in the Registry of the Superior Court. After the jury's verdict was  
9 rendered, Wharton-Smith retained attorney Mark Honeywell of the Gordon Thomas Honeywell law  
10 firm, a lawyer with whom I am acquainted relating to other fee dispute litigation. I put Mr. Honeywell  
11 on notice of my attorney's lien. Accordingly, Mr. Honeywell has made two separate payments of  
12 funds into the registry of the King County Superior Court under Cause # 07-2-14321-1 SEA, more  
13 than sufficient to pay the entirety of my lien. Because Mr. Krening would not assure me that he  
14 intended to honor my claim of attorney's lien, I moved Judge Prochnau before the Krening Chapter 13  
15 filing for an order maintaining the status quo and freezing the funds held in the registry of the court  
16 pending a court order adjudicating the final amount of my attorney's lien. Over Mr. Krening's  
17 opposition, Judge Prochnau granted that motion. A true copy of her order securing the funds in the  
18 registry of the Court pending determination of the amount of the attorney's lien is attached hereto at  
19 **Exhibit G**. Because Mr. Krening would not discuss how he intended to pay my lien, I went to a great  
20 deal of trouble in preparing the evidence and briefing to support my motion to foreclose my attorney's  
21 lien against the funds in the registry of the Court. We were only a couple of days away from  
22 completing and filing the motion to foreclose when Mr. Krening gave notice of his Chapter 13 petition.  
23  
24  
25

26 **DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 8 of 9

MARC L. SILVERMAN  
ATTORNEY AT LAW  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954



12. **Total Fees and Costs Charged.** Pursuant to my engagement letter to Mr. Krening, I was entitled to be paid by the hour at \$325.00 per hour and that unpaid billings bore simple interest at the rate of 12% per annum. As of around June 1, 2009, the unpaid balance due from Mr. Krening totaled approximately \$26,000. I am also entitled under the engagement letter to an award of reasonable attorney's fees and costs in having to litigate to get paid. I estimate that the total fees in foreclosing the attorney's lien will exceed \$12,000 additionally. I have had to hire bankruptcy counsel to represent me in the Bankruptcy. Those fees will be added on to what he owes me for the lien foreclosure proceeding.

DECLARED UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF  
WASHINGTON this day of July, 23 2009 at Seattle, Washington.

Michael R. Caryl

**DECLARATION OF MICHAEL R. CARYL  
SUPPORTING MOTION TO LIFT STAY IN  
BANKRUPTCY TO ADJUDICATE CLAIM OF  
ATTORNEY'S LIEN**

- 9 of 9

**MARC L. SILVERMAN**  
**ATTORNEY AT LAW**  
1621 114TH AVE. S.E., SUITE 220  
BELLEVUE, WASHINGTON 98004  
PHONE: (425) 455-1570 FAX: (425) 455-1954

# **EXHIBIT A**

378-4132

To Michael Cory!  
From Eric Krenning  
4/5/07

Thanks!

**HAND DELIVERED**

April 5, 2007

Eric Krening, Esq.  
2100 116th Ave NE  
Bellevue, WA  
98004-3016

Re: Terms of engagement

Dear Eric:

The terms of our engagement are set forth below. I will discuss this with you on Thursday morning and answer your questions. Before I can do anything further on your behalf, I will need you to sign off on this letter. Please signify your agreement to these terms and conditions by signing below on the enclosed copy. I will be hand delivering this to you when we meet. Take it back and read it. Call if you have further questions. You can sign and fax back or e-mail back your signature page, but I would ask that you return the signed hard copy.

#### **TERMS OF ENGAGEMENT**

The practices and procedures set forth herein will apply to your account, unless other written arrangements have been made.

##### **Scope of Engagement**

You initially engaged me to assist you in your dispute with your former clients, Drs. Wharton and Smith. You brought claims under a Federal statute with the acronym ADEA related to accommodation by the school district of your client's child suffering from Asperger's Syndrome. The case was tried to an Administrative Law Judge and you prevailed in the case. Your client and in particular, her husband, not the father of the disabled child, became disagreeable and abusive after the trial and while the written

closing argument was being drafted. The clients actually got involved in the drafting of the closing argument and have made your life miserable for about the last month. The ALJ has ruled in your favor and now is the time that an attorney's fee application should be prepared and sent to the ALJ. The clients' interference, abusive conduct, and criticisms of your work, has forced you to withdraw.

You have stated that you need to get out of the front lines in dealings with these people and have asked me to intervene as your counsel, seek to negotiate a settlement of fees and to insulate you from one on one dealing with these people. We have not discussed anything past attempts to negotiate a settlement. Obviously, suing your clients for those fees once you have withdrawn is problematic and raises many concerns, not the least of which is a possible malpractice counterclaim. I will discuss all of this with you when we meet. This will confirm, however, that my initial focus as your lawyer will be to obtain a resolution of this dispute that you can live with. The costs of litigating with these people if a settlement cannot be worked out could be substantial.

There is also the issue of your relations with Barry and Zundle. I understand that you still have some friction resulting from your having left your office-sharing arrangement with them. They have a separate billing that is owed to their firm, of which you are entitled to one-half. It is obviously in your best interest to keep up relationships with them and to cause your former clients to see that you and the old firm are united with regards unpaid fees.

One of the documents you emailed me yesterday was what appears to be a draft of a letter for my signature to your former clients about a proposal for settlement. While I do not usually allow clients to ghost correspondence for me, particularly at the outset of the relationship, we can discuss the contents of your letter and the advisability of sending something along the lines of your draft.

### **Retainer**

As a courtesy, I usually do not require an initial retainer when I take cases with established attorneys. That is based on your personal assurance at the time you engage me that you will promptly pay my fees as billed, according to the terms of this engagement letter. If one of my invoices is not paid on time, you will hear from me. If the invoice is not paid soon thereafter, I will withdraw as your counsel, commensurate with CR 71 and the Rules of Professional Conduct. I have a busy practice so I am not in a position to carry unpaid balances. Given that there is no retainer required, I am sure you can understand. If you are having trouble keeping up with monthly billings, you need to bring that to my attention immediately.

### **Organization of Work**

You have hired me for my background in the field of fees and ethics. I will be the lawyer principally responsible for the work in this case. Given the present posture, it is unlikely that anyone else would need to work on this matter, other than my legal assistant, unless it gets involved with actual litigation.

### **Basis for Fees**

You will be billed for legal services at the standard hourly rates charged by the lawyers or other personnel working on your matter. My hourly rate is \$300.00. If we use a contract lawyer, that person will be billed at \$190.00 per hour. I use an experienced trial lawyer friend at times, Lee Raaen, and if we did so in your case, he would be billed at \$225.00 per hour. Any paralegal work that is done is billed at \$85.00 per hour, although there is probably not much need for paralegal work, unless the case moves quickly into litigation. We do not charge for secretarial or legal assistant services. If we do use our office assistant on your case in a non-clerical capacity, such as assembling documents, creating spreadsheets or similar work, we bill her at \$50.00 per hour.

We bill by the hour, in tenth of an hour increments. Each invoice will show the services performed by the person who did the work and the amount of time in tenths of an hour. Ordinarily, there will only be one entry per day in which services are provided.

### **Costs and Expenses**

You will be charged for certain costs and expenses advanced or incurred by our firm on your behalf. Such charges include court fees, service of process fees, deposition and court reporter fees, if necessary, consulting or expert witness fees, if you agree such would be appropriate, long distance telephone charges, computerized legal research *outside of our basic plan*, at our cost, and messenger services and similar costs. We do not charge for faxes. Photocopies are billed at \$.05 a page, unless we have to send large jobs outside and, in such cases, we will bill those to you at our cost. We do not mark up any costs. All such costs are your responsibility. We will generally advance payment to these service providers where appropriate. We will not incur the expenses of experts or consultants without your consent.

### **Monthly Billing Statements – Other Terms**

My firm bills on a monthly basis. Ordinarily, all bills are due *upon receipt*. Simple interest of 1% per month will be charged for any unpaid balance after 20 days of the invoice date. If you have any question or objection to any fees or costs billed on any invoice, you should bring your question or objection to my attention within ten days of your receipt of the invoice.

### **Non-Payment of Fees**

If any litigation is necessary to collect any unpaid fees at the close of this engagement, or to interpret this agreement, the prevailing party is entitled to reasonable attorney's fees and costs of suit. Venue for any such action is in King County Superior Court.

### **Ownership of the File**

The case file that is assembled in my office is the property of my law firm, pursuant to WSBA Formal Opinion 181. In the event of either my withdrawal or your termination of me, the original file remains with my office. I will, however, arrange to have the file copied at your expense by an outside copy service, and the cost of the copying of the file must be paid at the time you come to pick up the file.

### **Termination by Either Party**

Either party may terminate this engagement by written notice. Written notice shall be made by delivery of a notice of termination to the other party ten days before the effective date of the termination. Such a notice to me, as your lawyer, shall be made to the office identified above. My notice to you, as client, shall be made to the address on this letter, unless you give me prior notice of a new address for purposes of delivery of such notice. I will not withdraw in any manner that violates any civil rule or the Rules of Professional Conduct. You agree that you will take no action which might deprive me of the compensation I am entitled to for services performed under this engagement.

### **Record Retention Policy**

At the conclusion of our representation of a client on a particular matter, we will tender to you all files and documents belonging to you, the client. We may also tender to you some of the work product, with the exception of certain correspondence and notes. We will make those file materials available to you for pick up. If you do not wish to receive back those materials, they will be destroyed. Because of the prohibitively high cost of storage, we will no longer be storing the entire client file. Your signature on this engagement letter is your authorization to our destruction of any file materials that you do not pick up, once made available.

### **Questions**

I clearly recognize that I am in a service business. I appreciate your choosing me to assist with this matter. I strive to provide legal services in an effective and efficient manner. I want all billings to be accurate and understandable. Please direct any questions about services, billing practices or the payment status of your account promptly to me. Would you please sign off on the copy that is enclosed and return it to me by facsimile or

Eric Krening, Esq.  
April 5, 2007  
Page 5

e-mail? I would like to have you sign and return the hard copy by mail. I will need at least the faxed executed agreement back before any further work will be done. I look forward to assisting you in this process.

Sincerely,

Michael R. Caryl

MRC:mow  
enclosure

Dated Effective: \_\_\_\_\_.

MICHAEL R. CARYL, P.S.

\_\_\_\_\_  
Michael R. Caryl, Attorney

The terms and conditions set forth above are agreeable to me and I agree to be bound thereby. I acknowledge that Mr. Caryl discussed the details of our fee arrangement orally during our intake interview and that after he sent this engagement letter to me, and that he answered all questions I may have brought to his attention, if any. I understand the terms and conditions of his representation as set forth in this letter.

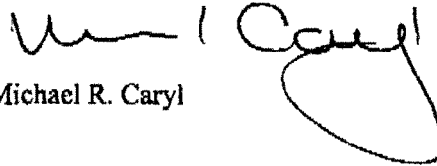
\_\_\_\_\_  
Eric Krening, Client



Eric Krening, Esq.  
April 5, 2007  
Page 5

e-mail? I would like to have you sign and return the hard copy by mail. I will need at least the faxed executed agreement back before any further work will be done. I look forward to assisting you in this process.

Sincerely,



Michael R. Caryl

MRC:mow  
enclosure

Dated Effective:

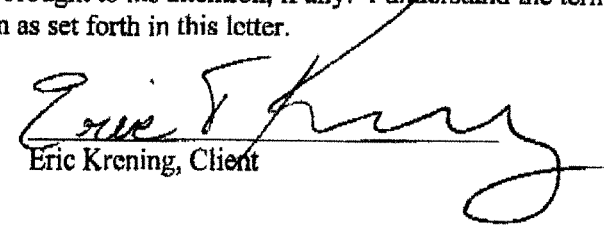
4-5-07

MICHAEL R. CARYL, P.S.

Michael R. Caryl, Attorney

The terms and conditions set forth above are agreeable to me and I agree to be bound thereby. I acknowledge that Mr. Caryl discussed the details of our fee arrangement orally during our intake interview and that after he sent this engagement letter to me, and that he answered all questions I may have brought to his attention, if any. I understand the terms and conditions of his representation as set forth in this letter.

Eric Krening, Client

# **EXHIBIT B**

**Michael R. Caryl, P.S.**  
18 West Mercer Street  
Suite 400  
Seattle, WA 98119-3971  
(206) 378-4125

Mr. Eric T. Krening  
Herman Recor Law Firm  
2100 116th Ave. NE  
Bellevue WA 98004

July 08, 2009  
Invoice # 10629

In Reference To: Fee Dispute - Marcia Wharton and Paul Smith

	<u>Amount</u>
Interest on overdue balance	\$202.09
Total amount of this bill	<u>\$202.09</u>
Previous balance	\$25,882.35
Balance due	<u><u>\$26,084.44</u></u>

7/8/2009  
8:51 AM

Michael R. Caryl, P.S.  
Pre-bill Worksheet

Page 1

---

Selection Criteria

---

Slip.Date	Earliest - 7/8/2009
Clie.Selection	Include: Krening Lien Collection

---

7/8/2009  
8:51 AM

Michael R. Caryl, P.S.  
Pre-bill Worksheet

Page 2

Nickname Krening Lien Collection | 231  
Full Name Michael R. Caryl, P.S.  
Address  
Phone Fax  
Home Other  
In Ref To Krening Lien Collection  
Fees Arrg. By billing value on each slip  
Expense Arrg. By billing value on each slip  
Tax Profile Exempt  
Round Fees 6 Minutes  
Last bill  
Last charge 7/7/2009  
Last payment Amount \$0.00

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
6/3/2009 9554	Mike Caryl Time Review email from Paul Simmerly about E&O insurance inquiry, and draft response	325.00	0.50	162.50	Billable
6/8/2009 9649	Mike Caryl Time Begin drafting motion to foreclose lien and MRC Decl in support	325.00	0.90	292.50	Billable
6/11/2009 9647	Mike Caryl Time Email to Nelson Berry asking for file materials	325.00	0.10	32.50	Billable
6/11/2009 9656	Mike Caryl Time Editing the MRC narrative decl in support of motion to foreclose	325.00	0.50	162.50	Billable
6/12/2009 9652	Mike Caryl Time Draft MRC authenticating declaratin and review of the potential documentary exhibits (.9); instrucionts toleg assistant re search for documentary exhibits (.2)	325.00	1.10	357.50	Billable
6/12/2009 9663	Mike Caryl Time Review correspondence file and ideitify exhibits for Decl and narrative; drafting the narrative decl (1.5)	325.00	1.20	390.00	Billable
6/16/2009 9797	JDR Time Meet with MRC and receive Krenning assignment- to analyze correspondence to support lien foreclosure	55.00	0.50	27.50	Billable
6/17/2009 9798	JDR Time Start analyzing correspondence	55.00	1.80	99.00	Billable

7/8/2009 -  
8:51 AM

Michael R. Caryl, P.S.  
Pre-bill Worksheet

Page 3

Krening Lien Collection: Michael R. Caryl, P.S. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total Billable
6/18/2009 9799	JDR Time correspondence analysis	55.00	3.00	165.00	Billable
6/19/2009 9712	Mike Caryl Time Tele from Mark Honeywell - he is going to deposit funds to the court registry next week	325.00	0.20	65.00	Billable
6/19/2009 9800	JDR Time Finish reading through Krening correspondence	55.00	3.40	187.00	Billable
6/22/2009 9713	Mike Caryl Time Begin drafting motion to maintain status quo for purposes of atty lien foreclosure (1.6) ; draft subjoined decl in support (.1); draft proposed order (.4); instructions to leg asst' JC, on filing and service (.2); brief conference with JDR and JC re paralegal tasks in oputting to egter evidencne formation to foreclose lien (.3); more work on the motion to foreclose (1.1)	325.00	4.70	1,527.50	Billable
6/22/2009 9801	JDR Time Begin to sort emails in categories support arguments	55.00	3.00	165.00	Billable
6/22/2009 9802	JDR Time Go through pleadings look for supporting pleading for the judicial estoppel argument	55.00	5.00	275.00	Billable
6/23/2009 9719	Mike Caryl Time Bring GDR up to speed on facts and clarify what I need him to be doing in prepping for filing motion to foreclose (.2)	275.00	0.20	55.00	Billable
6/23/2009 9803	JDR Time Analyze Krening correspondence and summarize into memo for MRC (2.5), Research filing under seal and put together method in a summary memo (1.5), Contact AIB to track down missing Krening document (.5), Begin work on memo regarding correspondence in support of Krening declaration (2.5)	55.00	8.00	440.00	Billable
6/24/2009 9724	Mike Caryl Time Coordinate with JDR about necessary documents supportinbg motin toforeclose attorn ey's lien (.4)	325.00	0.40	130.00	Billable
6/24/2009 9804	JDR Time Read MRC's draft motion to foreclose (.5), Identify specific emails to further support those arguments (2), Begin writing draft language that highlights the examples (1), Go through new binder of pleadings that	55.00	4.00	220.00	Billable

7/8/2009  
8:51 AM

Michael R. Caryl, P.S.  
Pre-bill Worksheet

Page 4

Krening Lien Collection: Michael R. Caryl, P.S. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
	arrived today (.5)				
6/25/2009 9805	JDR Time Work of Draft Krening Motion to Foreclose (6), Recieve new emails from MRC's inbox via jared and review those (1), check with court to see if Krening opp filing occurred, check deadline dates (.5)	55.00	7.50	412.50	Billable
6/26/2009 9741	Mike Caryl Time Review pleadings by Krening opposing motion and instructions to intern JDR	325.00	0.30	97.50	Billable
6/26/2009 9807	JDR Time Receive Krening reply to motion to maintain status quo, receive assignment on making a response (.5), Review Krening reply and prep our response (1.2)	55.00	2.20	121.00	Billable
6/27/2009 9766	Mike Caryl Time Drafting reply memo on status quo motion (1.5)	325.00	1.50	487.50	Billable
6/27/2009 9808	JDR Time Work on response to Krening with MRC (1.5)	55.00	1.50	82.50	Billable
6/29/2009 9747	Mike Caryl Time Draafting and editing the Reply memorandum and the MRC decl (2.0)	325.00	2.00	650.00	Billable
6/29/2009 9811	JDR Time Assist MRC with finalizing Krening Response (.5), email to Simmerly re: motion to seal (.2)	55.00	0.20	11.00	Billable
6/30/2009 9812	JDR Time exhibit prep	55.00	2.00	110.00	Billable
7/1/2009 9815	JDR Time email simmerly re filing under seal (.1), review pleadings with MRC and settle on ones to use (.8), Check in ECR for new filings, (.2), Just about finish up sections of Krening declaration (5)	55.00	6.20	341.00	Billable
7/2/2009 9758	Mike Caryl Time Drafting motion to foreclose and light research	325.00	2.10	682.50	Billable
7/2/2009 9816	JDR Time Assist in the final reviews and additions for Riser mediation letter,	55.00	3.00	165.00	Billable

7/8/2009  
8:51 AM

Michael R. Caryl, P.S.  
Pre-bill Worksheet

Page 5

Krening Lien Collection: Michael R. Caryl, P.S. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
	including insertion of Hawkes declaration (2.5) Produce and email mediation letter to mediator (.4) email Ms. Riser about details of mediation and logistics .2				
7/3/2009 9817	JDR Time Prep all Krening Filings and motions, get ready to file on Monday by cross checking exhibits with the factual and legal arguments made in reliance on them (1), start line by line review (1)	55.00	2.00	110.00	Billable
7/6/2009 9818	JDR Time Work on paragraphs of Krening declaration addressing him as a co-counsel and his inability or unwillingness to pay (2), continue line by line review (1) Put away Krening file per stop work order and prep short memo to MRC on status of lien foreclosure filings (.9)	55.00	4.00	220.00	Billable
7/7/2009 9819	JDR Time find BKRPTdocs online and go over them for details, scan and send to Malaier (.5)	55.00	0.50	27.50	Billable
TOTAL	Billable Fees		73.50		\$8,271.50

Date ID	Timekeeper Expense	Price Markup %	Quantity	Amount	Total
6/9/2009 9604	Pamela H Copies Photocopies for the month of May.	0.05	15.000	0.75	Billable
6/12/2009 9788	Jeremy Black Courier Seattle Legal File P/U & Del of 5 Boxes from Nelson Berry's Office to MRC for Rvw - Order placed 6/12/09 @ 10:35am; stmt rcvd 7-7-09.	62.50	1.000	62.50	Billable
6/29/2009 9744	Pamela H Court filing fees Electronically send working copies of Lien Claimant MRC's Reply pleadings to Judge Prochnau; Order #3514216819.	22.49	1.000	22.49	Billable
TOTAL	Billable Costs				\$85.74



7/8/2009  
8:51 AM

Michael R. Caryl, P.S.  
Pre-bill Worksheet

Page 6

Krening Lien Collection: Michael R. Caryl, P.S. (continued)

---

Calculation of Fees and Costs

---

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$8,271.50	
Total of Fees (Time Charges)		\$8,271.50
Costs Bill Arrangement: Slips By billing value on each slip.		
Total of billable expense slips	\$85.74	
Total of Costs (Expense Charges)		\$85.74
Total new charges		\$8,357.24
New Balance Current	\$8,357.24	
Total New Balance		<u><u>\$8,357.24</u></u>

# **EXHIBIT C**

HONORABLE GREG CANOVA  
Trial Date: 10/13/2008

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

MARCIA M. WHARTON and S. PAUL  
SMITH, husband and wife, and the marital  
community property composed thereof;  
and COLE WHARTON REEVES, a minor  
child, by and through his guardian, Marcia  
M. Wharton,

Plaintiffs,

v.

BERRY & ZUNDEL, PLLC, a  
Washington professional limited liability  
company; and ERIC T. KRENING,

Defendants.

NO. 07-2-14321-1 SEA

**NOTICE OF CLAIM OF ATTORNEY'S  
LIEN**

TO: CLERK OF COURT;  
AND TO: DEFENDANT ERIC T. KRENING;  
AND TO: PLAINTIFFS WHARTON AND SMITH;  
AND TO: DEFENDANT BERRY & ZUNDEL, PLLC

NOTICE IS HEREBY GIVEN that attorney Michael R. Caryl, and Michael R. Caryl,  
P.S., former counsel of record for Defendant Krening, has performed legal services for  
Defendant Krening. The last known address for Eric T. Krening is 16301 - 197th Avenue NE,

NOTICE OF CLAIM OF ATTORNEY'S LIEN - 1

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119  
PHONE: (206) 378-4125 FAX: (206) 378-4132  
michaelc@michaelcaryl.com

1 Woodinville, WA 98077. Such legal services were performed on behalf of Defendant Krening in  
2 the successful defense of all claims brought in this action by the Plaintiffs and pursuant of  
3 Krening's counterclaims against the Plaintiffs, which arose from the attorney-client relationship  
4 between Defendant Krening and the Plaintiff Wharton in 2006-2007.

5 Attorney's Lien Claimant Caryl claims a lien pursuant to RCW 60.40.010 against any  
6 settlement, recovery or judgment entered in favor of Krening against the Plaintiffs or any other  
7 recovery in this matter, pursuant to a written hourly fee agreement dated April 5, 2007.  
8 Attorney's Lien Claimant claims a lien for attorney's fees and reimbursement of unpaid costs,  
9 plus interest per the written hourly fee agreement of Lien Claimant and Defendant Krening of  
10 April 5, 2007, in the amount of \$20,329.56. Such lien extends to continuing simple interest at  
11 the rate of 12% per annum, per the fee agreement.  
12

13 DATED this 24<sup>th</sup> day of March, 2008

14 MICHAEL R. CARYL, P.S.

15  
16  
17 By   
18

19 Michael R. Caryl (WSBA #07321)

20 Attorney's Lien Claimant  
21  
22  
23  
24  
25  
26

NOTICE OF CLAIM OF ATTORNEY'S LIEN - 2

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119  
PHONE: (206) 378-4125 FAX: (206) 378-4132  
michaelc@michaelcaryl.com

CERTIFICATE OF MAILING

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date, I caused delivery of a true and accurate copy of the foregoing to the following individuals via the methods indicated below:

Defendant Berry & Zundle PLLC  
C. Nelson Berry  
Law Offices of C. Nelson Berry  
1708 Bellevue Avenue  
Seattle, WA 98122  
206-441-5444

Via ABC Legal Messenger Service, next day  
delivery

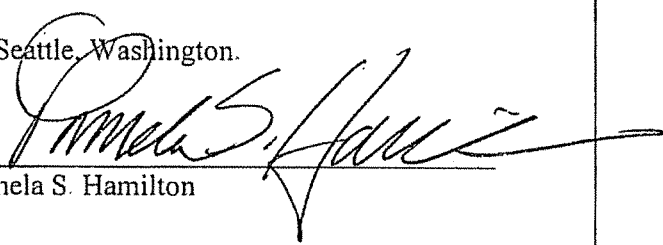
Plaintiffs Marcia Wharton and Paul Smith  
Gregory A. McBroom  
Livengood, Fitzgerald & Alskog  
121 Third Avenue  
Kirkland, WA 98083-0908  
425-822-9281

Via ABC Legal Messenger Service, next day  
delivery

Defendant Eric T. Krening  
16301 - 197<sup>th</sup> Avenue N.E.  
Woodinville, WA 98077  
206-922-3718

Via first class mail, postage prepaid, and by  
certified mail, return receipt requested.

Dated this 27<sup>th</sup> day of March, 2008 in Seattle, Washington.

  
Pamela S. Hamilton

NOTICE OF CLAIM OF ATTORNEY'S LIEN - 3

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119  
PHONE: (206) 378-4125 FAX: (206) 378-4132  
michaelc@michaelcaryl.com

# **EXHIBIT D**

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

MARCIA M. WHARTON and S.  
PAUL SMITH, husband and  
wife, and the marital  
community composed thereof;  
and COLE WHARTON REEVES, a  
minor child, by and through  
his guardian, Marcia M.  
Wharton,

Plaintiffs,

v.

BERRY & ZUNDEL, P.L.L.C., a  
Washington professional  
limited liability company;  
and ERIC T. KRENING,

Defendants.

NO. 07-2-14321-1 SEA

JUDGMENTS ON SPECIAL VERDICT

[CLERK'S ACTION REQUIRED]

I. JUDGMENT SUMMARY

Judgment Summary is as follows:

A. Judgment Creditor	BERRY & ZUNDEL, P.L.L.C.
B. Judgment Debtors	MARCIA M. WHARTON and S. PAUL SMITH, husband and wife, and the marital community composed thereof
C. Principal Judgment Amount	\$ 8,040.00

JUDGMENTS ON  
SPECIAL VERDICT

**ORIGINAL**

C. Nelson Berry III  
1708 Bellevue Avenue  
Seattle, Washington 98122  
(206)441-5444 FAX (206)838-6346

1 D. Interest to Date of Judgment \$ 2,008.90  
2 E. Attorney Fees \$ ~~37,140.95~~ 38,240  
3 F. Costs \$ ~~3,140.95~~ 2600  
4 G. Other Recovery Amounts \$ N/A  
5 H. Principal Amount of Judgment shall bear interest at the  
6 statutory rate of 12% per annum.  
7 I. Attorney fees, costs and other recovery amounts shall bear  
8 interest at the statutory rate of 12% per annum.  
9 J. Attorney for Judgment Creditor C. Nelson Berry III  
K. Attorneys for Judgment Debtor Pro Se

10 II. JUDGMENT SUMMARY

11 Judgment Summary is as follows:

12 A. Judgment Creditor ERIC T. KRENING  
13 B. Judgment Debtors MARCIA M. WHARTON and S.  
14 PAUL SMITH, husband and  
15 wife, and the marital  
16 community composed thereof  
17 C. Principal Judgment Amount \$ ~~27,833.80~~ 27,833  
18 D. Interest to Date of Judgment \$ 446.00  
19 E. Attorney Fees \$ 37,340  
20 F. Costs \$ 339  
21 G. Other Recovery Amounts \$ N/A  
22 H. Principal Amount of Judgment shall bear interest at the  
23 statutory rate of 12% per annum.  
24 I. Attorney fees, costs and other recovery amounts shall bear  
25 interest at the statutory rate of 12% per annum.  
26 J. Attorney for Judgment Creditor Paul E. Simmerly  
27 K. Attorneys for Judgment Debtor Pro Se

28 THIS MATTER having come on duly and regularly for trial

JUDGMENTS ON  
SPECIAL VERDICT



1 before the undersigned Judge; and the Jury having entered its  
2 Special Verdict Form on December 10, 2008, a true and accurate  
3 copy of which is attached hereto and incorporated herein by  
4 reference; and the Court having duly considered the Defendants'  
5 Motion for an Award of Reasonable Attorney Fees and Costs of  
6 Collection, and the declarations and pleadings submitted in  
7 support of and opposed to that motion; and being otherwise fully  
8 advised in the premises; now, therefore, it is hereby

9 ORDERED that judgment shall be entered against Marcia  
10 M. Wharton and S. Paul Smith, husband and wife, and the marital  
11 community composed thereof, and in favor of Berry & Zundel,  
12 P.L.L.C. in the principal amount of \$8,040.00; and it is further

13 ORDERED that judgment shall be entered against Marcia  
14 M. Wharton and S. Paul Smith, husband and wife, and the marital  
15 community composed thereof, and in favor of Berry & Zundel,  
16 P.L.L.C. for prejudgment interest on this liquidated amount from  
17 December 31, 2006 through the date of the entry of this Judgment  
18 on Special Verdict in the amount of \$2,008.90; and it is further

19 ORDERED that judgment shall be entered against Marcia  
20 M. Wharton and S. Paul Smith, husband and wife, and the marital  
21 community composed thereof, and in favor of Berry & Zundel,  
22 P.L.L.C. for its attorney fees in the amount of \$ 38,240,  
23 which the Court finds to be reasonable and necessary; and it  
24 is further

25 ORDERED that judgment shall be entered against Marcia  
26 M. Wharton and S. Paul Smith, husband and wife, and the marital  
27

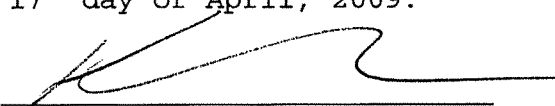
1 community composed thereof, and in favor of Berry & Zundel,  
2 P.L.L.C. for its costs of collection in the amount of ~~\$3,080.85~~ <sup>2600/1000</sup>  
3 and it is further

4 ORDERED that judgment shall be entered against  
5 Marcia M. Wharton and S. Paul Smith, husband and wife, and the  
6 marital community composed thereof, and in favor of Eric T.  
7 Krening in the principal amount of \$33,400.00, less an offset  
8 in the amount of \$5,120.20 for a judgment entered on April 10,  
9 2008, and less the interest which has accrued on that judgment  
10 through the entry of this one in the amount of \$446.00, for a  
11 net judgment in favor of Eric Krening in the amount of  
12 \$27,833.80; and it is further

13 ORDERED that judgment shall be entered against Marcia  
14 M. Wharton and S. Paul Smith, husband and wife, and the  
15 marital community composed thereof, and in favor of Eric T.  
16 Krening for his attorney fees ~~in the amount of \$~~ <sup>4600</sup> ~~37,340.10~~ <sup>1000</sup>  
17 which the Court finds to be reasonable and necessary; and it  
18 is further

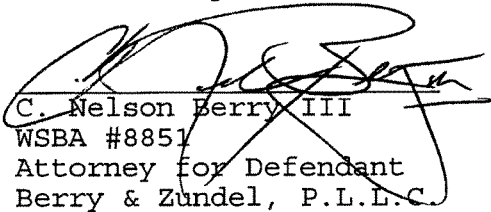
19 ORDERED that judgment shall be entered against Marcia  
20 M. Wharton and S. Paul Smith, husband and wife, and the marital  
21 community composed thereof, and in favor of Eric T. Krening for  
22 his costs of collection in the amount of \$ ~~57,340.10~~ <sup>1000</sup> ~~37,340.10~~ <sup>\$335</sup>

23 Done in Open Court this 17<sup>th</sup> day of April, 2009.

24  
25   
26 Honorable Kimberley Prochnau  
27 Superior Court Judge

28 JUDGMENTS ON  
SPECIAL VERDICT

1 Presented By:

2  
3   
4 C. Nelson Berry III  
5 WSBA #8851  
6 Attorney for Defendant  
7 Berry & Zundel, P.L.L.C.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JUDGMENTS ON  
SPECIAL VERDICT

C. Nelson Berry III  
1708 Bellevue Avenue  
Seattle, Washington 98122  
(206)441-5444 FAX (206)838-6346

**DEC 10 2008**

WHARTON ET ANO,

Plaintiffs,

vs.

BERRY & ZUNDEL ET ANO ,

Defendants.

No. 07-2-14321-1 SEA

SUPERIOR COURT CLERK  
BY CRAIG MORRISON  
DEPUTY

SPECIAL VERDICT FORM

Question No. 1: Did the law firm of Berry & Zundel, P.L.L.C. violate the  
Consumer Protection Act?

Answer: \_\_\_\_\_ Yes

☒ No

If your answer is no to Question No. 1, then please skip Question No's. 2, 3 & 4;  
and answer Question No. 5. If you answer is yes to Question No. 1, then please answer  
the following questions.

Question No. 2: What is the amount of damage, if any, you find was  
proximately caused by Berry & Zundel's violation of the  
Consumer Protection Act?

Answer: \$ \_\_\_\_\_

Question No. 3: Do you find that Marcia Wharton could have mitigated her  
damages?

Answer: \_\_\_\_\_ Yes

\_\_\_\_\_ No

**EXHIBIT "A"**

If you answered no to Question No. 3, then please skip Question No. 4, and answer Question No. 5. If you answered yes to Question No. 3, then please answer Question No. 4.

Question No. 4: What is the amount of these damages, if any, you find that Marcia Wharton could have mitigated?

Answer: \$ \_\_\_\_\_

Question No. 5: Did Eric Krening violate the Consumer Protection Act?

Answer: \_\_\_\_\_ Yes      ~~\_\_\_\_\_~~ No

If your answer is no to Question No. 5, then please skip Question No's. 6, 7 & 8 and answer Question No. 9. If your answer is yes to Question No. 5, then please answer the following questions.

Question No. 6: What is the amount of damage, if any, you find was proximately caused to the plaintiffs' by defendants Krening's violation of the Consumer Protection Act?

Answer: \$ \_\_\_\_\_

Question No. 7: Do you find that Marcia Wharton could have mitigated her damages?

Answer: \_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered no to Question No. 7, then please skip Question No. 8, and answer Question No. 9. If you answered yes to Question No. 7, then please answer Question No. 8.

Question No. 8: What is the amount of these damages, if any, you find that Marcia Wharton could have mitigated?

Answer: \$ \_\_\_\_\_

Question No. 9: Did the law firm of Berry & Zundel, P.L.L.C. breach its fiduciary duty to the plaintiffs?

Answer: \_\_\_\_\_ Yes

~~\_\_\_\_\_ No~~

If your answer is no to Question No. 9, then please skip Question 10, 11 & 12, and answer Question No. 13. If your answer is yes to Question No. 9, then please answer the following questions.

Question No. 10: What is the amount of damages, if any, you find were proximately caused to the plaintiffs by the law firm of Berry & Zundel, P.L.L.C.'s breach of fiduciary duties?

Answer: \$ \_\_\_\_\_

Question No. 11: Do you find that Marcia Wharton could have mitigated her damages?

Answer: \_\_\_\_\_ Yes

\_\_\_\_\_ No

If you answered no to Question No. 11, then please skip Question No. 12, and answer Question No. 13. If you answered yes to Question No. 11, then please answer Question No. 12.

Question No. 12: What is the amount of these damages, if any, you find that Marcia Wharton could have mitigated?

Answer: \$ \_\_\_\_\_

Question No. 13: Did Eric Krening breach his fiduciary duty to the plaintiffs?

Answer: \_\_\_\_\_ Yes      ~~\_\_\_\_\_~~ No

If your answer is no to Question No. 13, then please skip Question 14, 15 & 16, and answer Question No. 17. If your answer is yes to Question No. 13, then please answer the following questions.

Question No. 14: What is the amount of damages, if any, you find were proximately caused to the plaintiffs by Krening's breach of fiduciary duties?

Answer: \$ \_\_\_\_\_

Question No. 15: Do you find that Marcia Wharton could have mitigated her damages?

Answer: \_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered no to Question No. 15, then please skip Question No. 16, and answer Question No. 17. If you answered yes to Question No. 15, then please answer Question No. 16.

Question No. 16: What is the amount of these damages, if any, you find that Marcia Wharton could have mitigated?

Answer: \$ \_\_\_\_\_

Question No. 17: Did Marcia Wharton breach a contract with the law firm of Berry & Zundel, P.L.L.C.?

Answer: ☒ Yes ☐ No

If your answer is no, then please skip Question No. 18 and 19. If your answer is yes, then please answer the following question.

Question No. 18: Did Marcia Wharton agree to enter into the fee agreement with Berry & Zundel P.L.L.C. by justifiably relying upon negligent misrepresentations concerning Eric Krening's experience and/or level of success?

Answer: ☐ Yes ☒ No

If your answer is no, then answer Question No. 19. If your answer is yes, then skip Question No. 19, and answer Question No. 20.

Question No. 19: Is Berry & Zundel, P.L.L.C. entitled to recover the principal balance of \$8,040.00 for the attorney fees and costs incurred on or before December 31, 2006?

Answer: ☒ Yes ☐ No



Question No. 20: Did Marcia Wharton breach a contract with Eric Krening by failing to pay for legal services rendered and costs incurred after December 31, 2006?

Answer: X Yes \_\_\_\_\_ No

If your answer is no, then skip Questions No. 21, 22 & 23 and sign the verdict. If your answer is yes, answer the following question.

Question No. 21: Did Marcia Wharton agree to enter into the fee agreement with Eric Krening by justifiably relying upon negligent misrepresentations concerning Eric Krening's experience and/or level of success?

Answer: \_\_\_\_\_ Yes X No

If your answer is no, then answer Question No. 22. If your answer is yes, then skip Question No. 22 and sign the verdict.

Question No. 22: Is Eric Krening entitled to recover his attorney fees and costs incurred after December 31, 2006?

Answer: X Yes \_\_\_\_\_ No

If your answer is no, skip Questions No. 23 & No. 24 and sign the verdict. If your answer is yes, please answer the next question.

Question No. 23: If so, what is the amount he is owed?

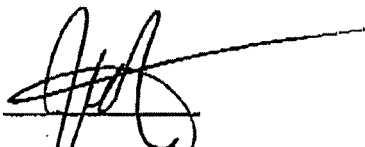
\$ 33,400

Question No. 24: After December 31, 2006 did Eric Krening and Marcia Wharton modify the terms of the existing Agreement for Legal Services; or did Marcia Wharton and Eric Krening create a new contract altogether?

Answer: X Modified Existing Contract  
       New Contract

PLEASE SIGN AND RETURN THIS VERDICT.

DATED 12/10/08

  
SIGNATURE OF PRESIDING JUROR

# **EXHIBIT E**

**FILED**  
KING COUNTY, WASHINGTON

JUN 16 2009

SUPERIOR COURT CLERK  
BY CRAIG MORRISON  
DEPUTY

IT IS ORDERED that moving party  
is required to provide a copy of this  
order to all parties who have  
appeared in the case

SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY

MARCIA M. WHARTON and S. PAUL  
SMITH, husband and wife, and the marital  
community property composed thereof; and  
C.R., a minor child, by and through his  
guardian, Marcia M. Wharton,

Plaintiffs,

v.

BERRY & ZUNDEL, PLLC, a Washington  
professional liability company; and ERIC T.  
KRENING,

Defendants.

NO. 07-2-14321-1 SEA

SECOND ORDER CORRECTING  
JUDGMENT ON SPECIAL  
VERDICT

THIS MATTER having come on regularly before the above-entitled court on  
the Motion of Defendant Krening for an Order to Correct the mathematical errors in  
the award of attorney's fees entered herein in a judgment dated April 17, 2009, but  
filed on or about May 8, 2009, and the Order Correcting Special Verdict entered on  
May 27, 2009, and the court having considered Defendant Krening's motion and  
Plaintiff's Response <sup>there being no objection</sup> ~~and the Reply of Defendant Krening~~ and the records and files  
herein, and being duly advised, now, therefore, it is hereby ORDERED, ADJUDGED  
AND DECREED as follows:


SECOND ORDER CORRECTING  
JUDGMENT ON SPECIAL VERDICT  
Page 1

HERMAN, RECOR, ARAKI, KAUFMAN,  
SIMMERLY & JACKSON, PLLC  
2100 - 116TH AVENUE N.E.  
BELLEVUE, WA 98004  
Phone (425) 451-1400 Fax (425) 451-1689

ORIGINAL

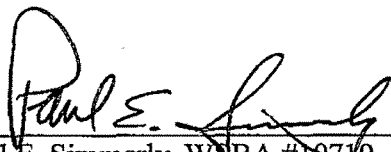
1 That the Judgment on Special Verdict entered on May 8, 2009 (but dated April  
2 17, 2009) and the Order Correcting Judgment on Special Verdict dated May 27, 2009,  
3 be and the same are hereby amended to provide that the judgment for attorney's fees  
4 awarded to Eric T. Krening against Marcia M. Wharton and Paul Smith is corrected to  
5 the sum of \$32,660. In all other respects the Judgment on Special Verdict shall be  
6 unchanged.  
7

8 DONE IN OPEN COURT this 12 day of June, 2009.  
9

10   
11  
12 Honorable Kimberley Prochnau

13 Presented by:

14 HERMAN, RECOR, ARAKI, KAUFMAN,  
15 SIMMERLY & JACKSON, PLLC

16   
17 Paul E. Simmerly, WSBA #10719  
18 Attorney for Defendant Eric T. Krening  
19  
20  
21  
22  
23  
24  
25  
26  
27

# **EXHIBIT F**

HONORABLE KIMBERLY PROCHNAU

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

MARCIA M. WHARTON and S. PAUL  
SMITH, husband and wife, and the marital  
community property composed thereof; and  
COLE WHARTON REEVES, a minor  
child, by and through his guardian, Marcia  
M. Wharton,

Plaintiffs,

v.

BERRY & ZUNDEL, PLLC, a Washington  
professional limited liability company; and  
ERIC T. KRENING,

Defendants.

NO. 07-2-14321-1 SEA

**FIRST AMENDED NOTICE OF CLAIM  
OF ATTORNEY'S LIEN (RCW  
60.40.010)**

**(Clerk's Action Required)**

TO: THE CLERK OF THE SUPERIOR COURT;

AND TO: NELSON BERRY, counsel for BERRY AND ZUNDEL;

AND TO: MARK HONEYWELL, counsel for the PLAINTIFFS;

AND TO: PAUL SIMMERLY, counsel for defendant ERIC T. KRENING

NOTICE IS HEREBY GIVEN that Michael R. Caryl of Michael R. Caryl, P.S., former  
counsel of record for defendant Eric T. Krening, by way of first amended notice of claim of attorney's

**FIRST AMENDED NOTICE OF CLAIM OF  
ATTORNEY'S LIEN - 1 of 1**

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119  
Phone: (206) 378-4125 Fax: (206) 378-4132  
michaelc@michaelcaryl.com

1 lien, as former attorney for defendant Krening in this action, has performed legal services in this  
2 litigation as lead counsel for defendant Krening until he withdrew for non-payment of attorney's fees.  
3 Such legal services were performed on behalf of the defendant Krening in this action in connection  
4 with the defense of claims brought by the plaintiffs in this action and in pursuit of defendant  
5 Krening's counterclaims for lawyer's fees.  
6

7 Attorney's Lien Claimant Caryl claims a lien pursuant to RCW 60.40.010(1)(c) & (d) against  
8 any settlement or recovery by Krening for Caryl's attorney's fees and costs pursuant to a written  
9 engagement letter dated April 5, 2007. Attorney's Lien Claimant Caryl further claims a lien pursuant  
10 to RCW 60.40.010(1)(e) against the judgment filed by the court in this matter on May 8, 2009 after  
11 entry of the Findings of Fact and Conclusions of Law, including the determination of fee-shifting  
12 attorney's fees. Claimant claims a lien for attorney's fees in the approximate amount of \$25,687.00  
13 including interest at the rate of 12% per annum.  
14

15 The clerk is hereby requested to file this notice with the "papers in the action," and make an  
16 entry in the execution docket showing the name of the claimant, the amount claimed and date of  
17 filing notice, pursuant to the requirements of RCW 60.40.010(1)(e).  
18

19 The last known address for defendant Krening is:

20 Eric T. Krening  
21 2812 Patten Pl. W.  
Seattle, WA 98119

22 Mr. Krening can also be contacted at:

23 Herman, Ricor, Araki, Kauffman, Simmerly & Jackson  
24 2100 116th Ave. NE  
25 Bellevue, WA 98004-3016  
26

**FIRST AMENDED NOTICE OF CLAIM OF  
ATTORNEY'S LIEN - 2 of 2**

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119  
Phone: (206) 378-4125 Fax: (206) 378-4132  
michaelc@michaelcaryl.com




Where he is employed.

DATED 14<sup>th</sup> day of May, 2009.

MICHAEL R. CARYL, P.S.

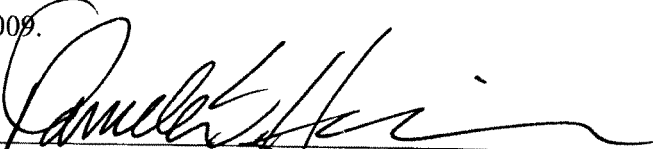
By:

  
Michael R. Caryl, WSBA #07321  
Attorney Lien Claimant

CERTIFICATE OF SERVICE - KRENING

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused delivery of a true and accurate copy of the foregoing First Amended Notice of Claim of Attorney's Lien to defendant Krening by certified mail, return receipt requested, and by regular first class mail, postage prepaid to his last known office address.

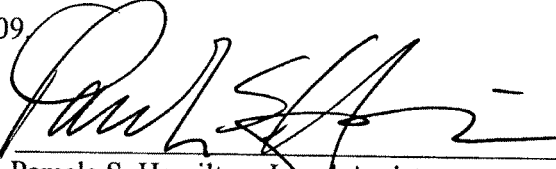
DATED this 14<sup>th</sup> day of May, 2009.

  
Pamela S. Hamilton, Legal Assistant

CERTIFICATE OF SERVICE - COUNSEL OF RECORD

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date, I caused via next-day legal messenger and same day electronic mail delivery of a true and accurate copy of the foregoing First Amended Notice of Claim of Attorney's Lien to defendants Berry & Zundle at their regular office, and to counsel for Plaintiffs, Mark Honeywell, and to Paul Simmerly, counsel for defendant Krening, at their regular offices.

DATED this 14<sup>th</sup> day of May, 2009.

  
Pamela S. Hamilton, Legal Assistant

FIRST AMENDED NOTICE OF CLAIM OF  
ATTORNEY'S LIEN - 3 of 3

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119  
Phone: (206) 378-4125 Fax: (206) 378-4132  
michaelc@michaelcaryl.com

# **EXHIBIT G**

RECEIVED

JUL 2 - 2009

MICHAEL R. CARYL, P.S.

HON. KIMBERLEY PROCHNAU

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

MARCIA M. WHARTON and S. PAUL  
SMITH, husband and wife, and the marital  
community property composed thereof;  
and COLE WHARTON REEVES, a minor  
child, by and through his guardian, Marcia  
M. Wharton,

Plaintiffs,

v.

BERRY & ZUNDEL, PLLC, a  
Washington professional limited liability  
company; and ERIC T. KRENING,

Defendants.

NO. 07-2-14321-1 SEA

**ORDER GRANTING LIEN  
CLAIMANT'S MOTION TO MAINTAIN  
STATUS QUO PENDING  
FORECLOSURE OF ATTORNEY'S  
LIEN**

**[PROPOSED]**

THIS MATTER having come on before the court without oral argument on attorney lien claimant Michael R. Caryl, P.S.' motion to maintain status quo pending resolution of its claim of attorney's lien and the court having considered the motion and its subjoined declaration and the opposition evidence and memoranda, of any other party, if any, and matters in reply, if any, and the Court being fully advised,

**MOTION TO MAINTAIN STATUS QUO  
PENDING FORECLOSURE OF ATTORNEY'S  
LIEN AND SUBJOINED DECLARATION OF  
LIEN CLAIMANT - 1 of 3**

**ORIGINAL**

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119 Phone: (206) 378-4125 Fax:  
(206) 378-4132  
michaelc@michaelcaryl.com

1 IT IS HEREBY ORDERED as follows:

2 A. Attorney lien claimant Michael R. Caryl, P.S.' motion to maintain *status quo* pending  
3 resolution of its claim of attorney's lien by this court is HEREBY GRANTED. The claim of  
4 attorney's lien has a statutory priority over all other claims, including the rights of the  
5 defendant Krening to be paid the amount of his judgment.  
6

7 B. Attorney lien claimant Michael R. Caryl, P.S. shall be given notice of any and all  
8 pleadings filed in this cause ~~from hereon out~~ <sup>from this date forward</sup>, including any actions seeking collection of the  
9 judgment, including but not limited to garnishments, in order to protect claimant's claim of  
10 attorney's lien. *This order is limited to proceedings affecting*  
*the principal judgment awarded to Mr Krening only.*

11 C. The Court orders that the *status quo* be maintained as to any funds paid into the registry  
12 of the Court or held by any party which may be subject to the above-described claim of  
13 attorney's lien by Michael R. Caryl, P.S. The Clerk is hereby directed to withhold all funds  
14 deposited to the registry of this court by plaintiffs in satisfaction of the judgment entered in this  
15 case pending further order of this Court, wherein attorney lien claimant has been given full and  
16 timely notice of any pleadings seeking such order.  
17

18 Done in Chambers this 30 day of ~~July~~ <sup>June</sup>, 2009. *100*

19  
20  
21 HON. KIMBERLEY PROCHNAU  
22 King County Superior Court Judge

23 *Any party may move to lift ~~stay~~ and for vacate*  
24 *order if claimant Caryl does not move in prompt*  
25 *and timely manner to resolve his claim.*  
26

MOTION TO MAINTAIN STATUS QUO  
PENDING FORECLOSURE OF ATTORNEY'S  
LIEN AND SUBJOINED DECLARATION OF  
LIEN CLAIMANT - 2 of 3

LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119 Phone: (206) 378-4125 Fax:  
(206) 378-4132  
michaelc@michaelcaryl.com

1 Presented by:

2  
3 MICHAEL R. CARYL, P.S.  
4  
5

6 Michael R. Caryl, WSBA #7321  
7 Attorney for Attorney Lien Claimant  
8 Michael R. Caryl, P.S.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**MOTION TO MAINTAIN STATUS QUO  
PENDING FORECLOSURE OF ATTORNEY'S  
LIEN AND SUBJOINED DECLARATION OF  
LIEN CLAIMANT - 3 of 3**

**LAW OFFICES  
MICHAEL R. CARYL, P.S.  
A PROFESSIONAL SERVICES CORPORATION  
18 WEST MERCER STREET, SUITE 400  
SEATTLE, WASHINGTON 98119 Phone: (206) 378-4125 Fax:  
(206) 378-4132  
michaelc@michaelcaryl.com**